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6 Attorneys for Plaintiff
7 U.S. SPECIALTY INSURANCE COMPANY

8
9 UNITED STATES DISTRICT COURT
10
11 NORTHERN DISTRICT OF CALIFORNIA

12 U.S. SPECIALTY INSURANCE
13 COMPANY, a Texas corporation

14 Plaintiff,

15 v.
16 FRY'S ELECTRONICS, INC., a California
corporation

17 Defendant.

18 CASE NO.:

19 **COMPLAINT FOR:**

20 **1. BREACH OF CONTRACT**
2. INDEMNITY
3. QUANTUM MERUIT

21 **COMPLAINT**

22 Plaintiff, U.S. Specialty Insurance Company, a Texas corporation ("Plaintiff"),
23 states as follows:

24 **PARTIES**

25 1. Plaintiff is a Texas corporation with its principal place of business in
Houston, Texas.

26 2. Defendant, Frys Electronics, Inc. ("Frys") is a California corporation with its
principal place of business in San Jose, California.

27 **JURISDICTION AND VENUE**

28 3. This Court has diversity jurisdiction of this action under 28 U.S.C.
§1332(a)(1), because the matter in controversy exceeds the sum of \$75,000, exclusive of

1
2 interest and costs, and there is complete diversity between the parties.

3 4. Venue of this action in this Court is proper under 28 U.S.C. § 1331(b)(1)
because the Defendants reside in this district in the State of California.

5 **GENERAL ALLEGATIONS**

6 5. Plaintiff and Onkyo U.S.A. Corporation (“Onkyo”) entered into a Trade
7 Credit Insurance Policy – MultiDebtor (“Policy”) under which Plaintiff insured certain
8 trade credit debtors of Onkyo. One of those was Frys, whom Onkyo sold material to on
9 credit. The Policy provided, amongst other things, that in the event a claim is paid,
10 Onkyo assigns to Plaintiff, all of its right, title and interest with respect to the debt that
11 makes up the claim.

12 6. Onkyo is a supplier of audio, speaker and related electronic components.
13 Defendant Frys is a big-box retailer that sells electronics throughout the country.

14 7. On or about April 12, 2002 Onkyo and Defendant Frys entered into a credit
15 agreement whereby Onkyo would sell to Defendant Frys, home audio, speakers and
16 related electronics on credit (“Credit Agreement”). A true and correct copy of the Credit
17 Agreement is attached hereto as **Exhibit 1** and incorporated herein by reference.

18 8. Frys failed to pay Onkyo for a number of purchases between 2017 and 2019
19 and Onkyo ultimately made a claim on the Policy.

20 9. Plaintiff investigated the claim and determined it to be valid and paid the
21 claim in the sum of \$331,362.00.

22 10. Pursuant to the terms of the Policy, Onkyo’s rights under the credit
23 agreement and the debt owed by Frys were assigned to Plaintiff upon Plaintiff’s payment
24 of the claim.

25 **FIRST CLAIM FOR RELIEF**

26 **(Breach of Contract: Against Frys)**

27 11. Plaintiff incorporates herein by reference as though fully set forth herein, its
28 allegations contained in paragraphs 1 through 10.

1 12. Onkyo performed all its requirements under the credit agreement with
2 Defendant Frys.

3 13. Plaintiff is assignee of all of Onkyo's rights under the credit agreement with
4 respect to the amounts paid under the claim.

5 14. Defendant Frys has breached the credit agreement by failing to pay amounts
6 due and owing under the credit agreement.

7 15. As a result of the breach by Defendant Frys, Plaintiff has been damaged in
8 the principal amount of \$331,362.00 plus interest at the maximum permitted rate under
9 the law, until paid.

SECOND CLAIM FOR RELIEF

(Indemnity: Against Frys)

12 16. Plaintiff incorporates herein by reference as though fully set forth herein, its
13 allegations contained in paragraphs 1 through 10.

14 17. Frys is obligated to reimburse Plaintiff in full, for any and all payments
15 made to Onkyo on Frys behalf.

THIRD CLAIM FOR RELIEF

(Quantum Meruit: Against Frys)

18 18. Plaintiff incorporates herein by reference as though fully set forth herein, its
19 allegations contained in paragraphs 1 through 10.

20 19. Within the last four years, Plaintiff provided audio, speaker and related
21 electronic components to Defendant Frys at the special request of Frys. Frys knew that
22 these products were being provided and agreed to pay their reasonable value to Onkyo.

23 20. The fair and reasonable value of the product provided to Frys is
24 \$331,362.00.

25 21. No part of this sum has been paid despite repeated requests from Plaintiff for
26 payment and there is now due and owing from Defendant Frys to Plaintiff, as assignee of
27 the rights of Onkyo, the amount of \$331,362.00, plus interest at the maximum permitted
28 rate under the law, until paid and costs of suit.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

ON THE FIRST, SECOND AND THIRD CLAIMS:

1. For the sum of \$331,362.00 from Defendant Frys Electronics, Inc., a California corporation plus interest at the maximum legal rate, until paid and costs of suit.

ON ALL CLAIMS:

2. For costs of suit herein incurred;
3. For such other and further relief as the Court may deem proper.

Dated: April 21, 2020

LANAK & HANNA, P.C.

By: /s/ Michael K. Murray
MICHAEL K. MURRAY
Attorney for Plaintiff
U.S. SPECIALTY INSURANCE
COMPANY

EXHIBIT 1

Rec. 4/23

ONKYO[®]

IMAGINATIVE SIGHT & SOUND

ONKYO U.S.A. CORPORATION

DATE:

4/12/02

ONKYO CREDIT APPLICATION

#

FIRM NAME		DBA	EMAIL
STREET ADDRESS		PHONE	FAX
CITY		STATE	ZIP
FULL NAME OF OWNER OR OWNERS (or an authorized officer of corporation) LIST HOME ADDRESS & ZIP CODE FOR PARTNERSHIP OR INDIVIDUAL NAME TITLE			
PARTNERSHIP % OR % OF STOCK OWNED ADDRESS			
See Attached			
PLEASE ✓ ONE	INDIVIDUAL <input type="checkbox"/>	PARTNERSHIP <input type="checkbox"/>	CORPORATION <input checked="" type="checkbox"/>
FED. TAX I.D. # [REDACTED] D&B NO. S.S. # IF INDIVIDUAL			
NAME & ADDRESS OF PARENT CO. IF A SUBSIDIARY			
STATE OF INCORP.		# STORES	EMPLOYEES
TYPE OF BUSINESS		DATE STARTED	
ESTIMATED ANNUAL SALES		PROJECTED ANNUAL ONKYO VOLUME \$	
FORMER BUSINESS		LOCATION	
OWN OR RENT BUILDING—IF RENT—FROM WHOM?		VALUE	
MAJOR LINES CARRIED:			
TRADE REFERENCES: List at least six (6) References			
1	NAME	ADDRESS	TELEPHONE #
2	NAME	ADDRESS	TELEPHONE #
3	NAME	ADDRESS	TELEPHONE #
4	NAME	ADDRESS	TELEPHONE #
5	NAME	ADDRESS	TELEPHONE #
6	NAME	ADDRESS	TELEPHONE #
PLEASE SIGN ATTACHED BANK RELEASE LETTER			
BANK REFERENCE—Name and Address		TEL. #	FAX #
BANK OFFICER	ACCT. #—CHECKING	ACCT. #—LOANS	SECURED YES <input type="checkbox"/> NO <input type="checkbox"/>
AMOUNT OF FIRST ORDER	MONTHLY PURCHASES ESTIMATE		
NAME OF REPRESENTATIVE WHO GAVE YOU THIS FORM			
mark Friedman			
CREDIT LIMIT	TERMS	ATTACH TERMS SHEET <input type="checkbox"/> REGULAR <input type="checkbox"/> SPECIAL	CREDIT MANAGER
DATE	SALES		

(OVER)

FINANCIAL STATEMENTS

Fiscal Year Ends	Name of Your Independent Accountant	Telephone No.
Are Your Accounts Receivable and/or Inventory Pledged as Security		If Yes: Name and Address of Secured Party(s) is
<input type="checkbox"/> Yes <input type="checkbox"/> No	Name _____	Telephone No. _____
	Address _____	

A current complete financial statement that includes both Profit and Loss and Balance Sheet (past fiscal year end and interim information if appropriate) must either accompany this application or be forwarded to the ONKYO Credit Department.

The undersigned hereby authorizes ONKYO to make such inquiries as are necessary to obtain credit information.

APPLICANT'S SIGNATURE ATTESTS FINANCIAL RESPONSIBILITY, ABILITY AND WILLINGNESS TO PAY OUR INVOICES IN ACCORDANCE WITH TERMS.
INDICATES AN AGREEMENT AND ~~NON A SECURITY AGREEMENT SECURING ONKYO EQUIPMENT IF SO DESIRED BY ONKYO.~~

THE ABOVE INFORMATION AS WELL AS THAT GIVEN ON THE REVERSE SIDE IS FOR THE PURPOSE OF OBTAINING CREDIT AND IS WARRANTED TO BE TRUE.
I/WE HEREBY AUTHORIZE THE FIRM TO WHOM THIS APPLICATION IS MADE TO INVESTIGATE THE REFERENCES LISTED PERTAINING TO MY/OUR CREDIT
AND FINANCIAL RESPONSIBILITY.

Authoriz'd Signature _____

Ka B
EXECUTIVE V.P. & CORP SECY

Date _____

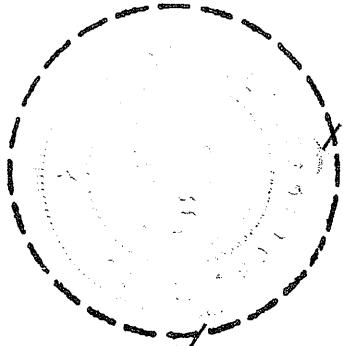
4/12/02

Authorized Signature _____

Title _____

Date _____

If Corporation, Affix Seal Below.



Witnessed By

John M. McIntire
John M. McIntire



ONKYO U.S.A. CORPORATION

18 Park Way, Upper Saddle River, NJ 07458

Tel: (201) 785-2600 Fax: (201) 785-2650

ONKYO USA CORPORATION

CREDIT INFORMATION RELEASE AUTHORIZATION

The undersigned has requested ONKYO USA CORPORATION to extend credit to it on a continuing basis.

In order to enable ONKYO USA CORPORATION to make an initial credit investigation, authorization is hereby given you to disclose to and to discuss with ONKYO USA CORPORATION all information and documents you may have concerning the credit history and credit status of the undersigned.

Dealer Name

Fry's Electronics, Inc.

Signature

A handwritten signature in black ink, appearing to read "Fry's Electronics, Inc.", is written over a horizontal line. Below this line, a handwritten signature of a person is present, consisting of stylized initials and a surname.



CREDIT REFERENCES

OFFICERS:

John C. Fry, CEO
 William R. Fry, President
 David A. Fry, Chief Information Officer
 Kathryn J. Kolder, Executive Vice President & Corporate Secretary

HOME OFFICE ADDRESS: 600 E. Brokaw Rd. - San Jose, CA 95112 - 408-487-4500

COMPANY INFORMATION:

Corporation Established March 1985
 Director of Finance: Donald A. Madrid
 Controller: Chris Schieber
 Federal Tax ID # [REDACTED]
 CA Resale # SR Y GH 26-762263
 AZ Resale # 07547835U
 TX Resale # 1-77-0062030-9

STORE LOCATIONS

#	LOCATION	ADDRESS & ZIP CODE	TELEPHONE	FAX	OPENED
3	Palo Alto, CA	340 Portage Ave. 94306	650-496-6000	650-496-6018	July 1990
5	Manhattan Beach, CA	3600 Sepulveda Blvd. 90266	310-364-3797	310-364-3718	February 1992
6	Campbell, CA	600 E. Hamilton Ave. 95008	408-364-3700	408-364-3718	August 1993
7	Fountain Valley, CA	10800 Kalama River Ave. 92708	714-378-4400	714-378-4418	October 1993
8	Woodland Hills, CA	6100 Canoga Ave. 91367	818-227-1000	818-227-1018	June 1995
9	San Jose, CA	550 E. Brokaw Road 95112	408-487-1000	408-487-1018	March 1996
10	Anaheim, CA	3370 E. La Palma Ave. 92806	714-688-3000	714-688-3018	April 1996
11	Burbank, CA	2311 N. Hollywood Way 91505	818-526-8100	818-526-8118	June 1996
12	Sunnyvale, CA	1077 Argus Ave. 94085	408-617-1300	408-617-1318	October 1990 - Reloc Mar 1998
14	Sacramento, CA	4100 Northgate Blvd. 95834	916-286-5800	916-286-5818	April 1997
15	San Diego, CA	9825 Stonecrest Blvd. 92123	858-514-4500	858-514-4518	May 1997
16	Wilsonville, CA	29400 S.W. Towncenter Loop 97070	503-570-6000	503-570-6018	June 1997
17	Tempe, AZ	2300 W. Baseline Rd. 85283	602-659-8500	602-659-8518	August 1997
18	Dallas, TX	12710 Executive Drive 75238	214-342-5900	214-342-5918	November 1997
19	Arlington, TX	102 East I-20 76018	817-557-6500	817-557-6518	October 1997
20	Phoenix, AZ	3035 W. Thunderbird Rd. 85029	602-467-2000	602-467-2018	November 1999
21	Fremont, CA	43800 Osgood Road 94539	510-252-5300	510-252-5318	July 1988 - Reloc Dec 1998
22	Austin, TX	12707 N. Mopac Expwy 78727	512-733-7000	512-733-7018	September 2001
28	City of Industry, CA	13401 Crossroads Pkwy No. 91746	562-463-2400	562-463-7018	January 2002
23	Houston, TX	10241 N. Fwy I-45 77037	281-931-2200	281-931-2218	February 2001
40	Outpost.Com	On-line Web-Site	----	----	November 2001

CREDIT REFERENCES

COMPANY	ADDRESS	CITY / STATE / ZIP	CONTACT INFORMATION
Intel Corporation FMI-78	1900 Prairie City Rd.	Folsom, CA 95630	By fax only 916-356-3240
Compaq Computer Corp.	P.O. Box 692000	Houston, TX 77269-2000	By fax only 281-514-7778
Panasonic Co. West	6550 Katella Ave.	Pan Zip 18B-5 Cypress, CA 90630-5102	Ph 714-373-7352 Prefer by fax 714-373-7349
Maytag	403 W. Fourth St. North	Newton, IA 50208	Ph 641-787-8696 Fax 5641-787-8793
Ingram Micro, Inc.	1600 E. St. Andrew Plc	Santa Ana, CA 92799	Information provided by mail only.
Sony Corporation	3300 Zanker Road	San Jose, CA 95124	Information provided by mail only.

BANK REFERENCE: COMERICA BANK - CALIFORNIA - 250 Lytton Ave. - Palo Alto, CA 94301

Comerica Securities Account # [REDACTED] - Acct Rep: Bob Muzio - Tel: 650-462-6082

Concentration Account # [REDACTED] - Acct Rep: Robert Gajewski - Tel: 650-462-6151